IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RSA. NO. 344 OF 1995.

Judgment Reserved on: **.24.4.2007**

Date of Decision: 15.5.2007

Mohan Singh **…….Appellant**

Versus

State of H.P. **……** **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No

For the appellant: ***Mr. G.D. Verma, Sr. Advocate with***
Mr. Romesh Verma, Advocate.

For the respondent: ***Mr. M.L. Chauhan, Addl. Advocate General.***

Kuldip Singh, J

This appeal is against the judgment, decree dated 30.9.1995 passed by learned District Judge, Solan in Civil Misc. Appeal No.42-S/130 of 95/94 confirming order dated 31.10.1994 passed by Assistant Collector Ist Grade, Kandaghat in case No..28/13-A of 1993.

. The brief facts are that State of H.P. filed ejectment Proceedings Under Section 163 of the H.P. Land Revenue Act, 1953 against the appellant. The Assistant Collector Ist Grade took cognizance on the report of the Forest Range Officer, Solan and subsequent demarcation report of Naib Tehsildar, Kandaghat dated 12.12.1992 that Mohan Singh has encroached

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W*hether reporters of Local Papers may be allowed to see the Judgment?* yes

upon the Govt. Forest land bearing Khata/khatauni No.24/37 min, Khasra No.283/187 and D-79 measuring 0-1-14 situated in mauza Ded and D-79. Mohan Singh filed reply to show cause notice under Section 163 of the Act. He has objected to the notice on the ground of jurisdiction, adverse possession. He has also denied the title of the State. The rejoinder to the reply was filed wherein stand taken by Mohan Singh was denied. The Assistant Collector on 31.10.1994 came to the conclusion that Mohan Singh has encroached Khasra No.283/187/1 and D-79 both measuring 0-1-14 and therefore, he ordered issuance of warrant of ejectment of the encroacher. The order dated 31.10.1994 was assailed by way of appeal by Mohan Singh which has been dismissed by learned District Judge on 30.9.1995. In this way the above appeal has been filed.

I have heard learned counsel for the parties and have also gone through the record.

The appeal has been admitted on the following substantial questions of law on:-

1 ***Whether in the absence of demarcation of the respective plots of the parties by competent revenue officer, the findings as recorded by the courts below are without jurisdiction?***

2. ***Whether in view of the order dt. 6-3-93 passed by the Ld. Assistant Collector, Ist Grade, Kandaghat holding that the Naib Tehsildar, Kandaghat had not mentioned the extent of encroached area, the subsequent proceedings are without jurisdiction and the principle of natural justice have been violated?***

3. ***Whether in the absence of preparation of decree sheet by the Assistant Collector , Ist Gr. Kandaghat, the subsequent proceedings of ejectment are illegal and without jurisdiction?***

4. ***Whether the demarcation proceedings in the present case in the absence of fixation of 3 permanent points is void in view of the law as laid down in case reported in Shimla Law cases 1992 volume 2 Page 307?***

5. ***Whether the judgment & decree passed by the Ld. District Judge is illegal and wrong, as the appeal in question could not be decided in the absence of decree sheet?***

The learned senior counsel appearing for the appellant has submitted that demarcation has not been carried out by the competent officer, the land in question has not been identified, decree sheet has not been prepared by the Assistant Collector, therefore, proceedings are illegal. He has submitted that learned District Judge has wrongly confirmed the order dated 31.10.1994 passed by Assistant Collector. He has further submitted that in absence of decree sheet, the lower Appellate Court should not have decided the appeal. The learned Additional Advocate General supported the impugned judgment, decree and has submitted that two Courts below have concurrently come to the conclusion that Mohan Singh is an encroacher. There is no substantial question of law involved in the appeal which requires determination by this Court.

Substantial Questions of law 1,2 and 3:-

The learned Senior Advocate appearing for Mohan Singh has submitted that the land in dispute has not been identified, there is no proper demarcation, and in the absence of identification of the land, the proceedings against the appellant are wrong and illegal. The Assistant Collector vide order dated 3.2.1993, ordered show cause notice to Mohan Singh under Section 163 of the Act. In the reply dated 5.3.1993 Mohan Singh has denied the title of State of H.P. or any

other authority on the land in dispute. It has been alleged that said land is in his possession or in the possession of his family for the last more than 30 years and he always claims himself to be owner of the said land. It has been submitted that notice is vague and lacks better particulars. No specific plea of identification of the land has been taken. Even though it has been submitted that tatima showing the location from where the eviction is sought has not been supplied along with the show cause notice. Mohan Singh while appearing as RW-4 has specifically stated that there was a kachha shed on the disputed land and he has constructed a new house over the old foundation in the year 1990. He has further stated that he considers said land as his own land. In his statement he has no where stated that there is any confusion to him regarding the disputed land, rather tenor of his statement is that he is aware of the land in dispute. He has specifically stated that as per his ancestors sale of grass, wood was going on since 1947 from said land. The purpose of demarcation is only to identify the property but when parties are aware of the property then no further identification by way of demarcation is required. In the present case appellant Mohan Singh has taken the plea of adverse possession and this plea is asserted in para-4 of the grounds of appeal. Therefore, it is clear that appellant is well aware of the identification of the land from where respondent is seeking his eviction. There is no confusion to him about the identification and no prejudice has been caused to him on this score. The plea of adverse possession of appellant on land in dispute shows that he admits the title of respondent on said land. It is different that he has not proved his plea of adverse possession on said land. In the grounds of appeal before the Ist Appellate Court he has not raised any grievance with respect to identification of the land in

dispute. In 2nd appeal the plea of proper identification of the disputed land is not available to appellant. Hence, questions No.1 to 3 are decided against the appellant.

Substantial question of law 4 and 5 :-

Learned Senior counsel for the appellant has submitted that decree was not prepared by the Assistant Collector, therefore, ejectment order passed by him with respect to the disputed land is wrong and illegal. He has submitted that in the absence of decree the lower Appellate Court should not have decided the appeal .

As per Rule 6-A, Order 20 CPC, in certain situation appeal can be filed even without filing a copy of the decree and in such a case, last paragraph of the judgment for the purposes of Rule 1 of Order 41, is to be treated as decree. It is thus clear that for filing appeal, copy of decree is not absolutely necessary and appeal is competent without copy of decree. Rule 1 of Order 41, CPC after amendment with effect from 1.7.2002, further states that the appeal shall be accompanied by a copy of the judgment. The decision of Assistant Collector in ejectment proceedings in absence of decree will not become illegal and without jurisdiction. In absence of decree, the appeal filed before first appellate court without decree was competent and will not render the judgment and decree of the learned District Judge illegal. There is no substance in the submissions made by learned Senior Counsel in support of questions No. 3 and 5, which are decided against the appellant.

The two courts below have concurrently appreciated the facts on record and have passed ejectment order against the appellant. The learned Senior Counsel appearing on behalf of the appellant has failed to make out any case for interference. The judgment and decree passed

by the learned District Judge, confirming the ejectment order passed by the Assistant Collector, require no interference.

In view of above discussion, the appeal is dismissed. The impugned judgment and decree are upheld, with costs throughout.

(Kuldip Singh)
Judge

May 15, 2007
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